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UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT TACOMA

Petitioner,

PATRICK GLEBE,

ROBERT BENOIT.

v.

No. C13-5208 RJB

ORDER ADOPTING REPORT AND RECOMMENDATION DISMISSING HABEAS CORPUS PETITION AS UNTIMELY

Respondent.

This matter comes before the Court on the Report and Recommendation of the United States Magistrate Judge Karen L. Strombom. Dkt. 17. Petitioner has filed an objection to the Report and Recommendation asserting that he is entitled to equitable tolling of the statute of limitations based on actual innocence and attorney abandonment. Dkt. 18. The Court has considered the Report and Recommendation, the objection to the Report and Recommendation, and the remaining record.

The Report and Recommendation should be adopted and the petition dismissed as time barred. As detailed in the Report and Recommendation, Petitioner failed to file his petition within one year of the date his state court judgment became final. Petitioner's objection is a restatement of the argument in his habeas petition and as detailed in the Report and Recommendation fails to provide any basis for statutory or equitable tolling. Petitioner's objections are without merit. There are no extraordinary circumstances here that prevented Petitioner from timely filing his petition on his own. Petitioner fails to demonstrate any deception, fraud, or error that prevented him from timely filing his federal habeas petition. Petitioner has also failed to establish the actual innocence standard.

ORDER ADOPTING REPORT AND RECOMMENDATION - 1

Petitioner provides no evidence of any external circumstance beyond his direct control that prevented him from timely filing his federal habeas petition or other extraordinary circumstances that might qualify him for equitable tolling of the statute of limitations.

The Magistrate Judge concluded that Petitioner is not entitled to a Certificate of Appealability. Dkt. 17 p. 10. After a review of the record, the court concurs with the recommendation of the Magistrate Judge. Petitioner has not met the requirements for obtaining a Certificate of Appealability. A Certificate of Appealability should be denied.

The Court, having reviewed the petition for writ of habeas corpus, the response, the Report and Recommendation of Magistrate Judge Karen L. Strombom, objections to the Report and Recommendation, if any, and the remaining record, does hereby find and **ORDER**:

- (1) The Court adopts the Report and Recommendation.
- (2) The petition for writ of habeas corpus (ECF No. 5) is **DISMISSED WITH PREJUDICE.**
- (3) A Certificate of Appealability is **DENIED.**
- (4) The Clerk is directed to send copies of this Order to Petitioner, counsel for Respondent and to the Hon. Karen L. Strombom.

 ${f DATED}$ this 8^{th} day of July, 2013.

ROBERT J. BRYAN

United States District Judge